IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)
WEDNESDAY, THE TWENTY NINETH DAY OF SEPTEMBER
TWO THOUSAND AND FOUR

PRESENT
**THE HON'BLE DR JUSTICE G.YETHIRAJULU**

**WRIT PETITION NO : 14747 of 2004**

Between:
M/s.Nagarjuna Construction Company Ltd.,
having its Corporate Office at, 41, Nagarjuna Hills,
Panjagutta, Hyderabad represented by its
Company Secretary,Mr.M.V.Srinivasa Murthy.

**..... PETITIONER**

AND

1 Govt. of A.P., rep., by its Principal Secretary,
Transport, Roads & Buildings,
Secretariat, Hyderabad.
2 The Engineer-in-Chief (R&B), Administration External Aided Project,
Erramanzil, Hyderabad.
3 The Superintending Engineer (R&B), Nellore Circle, Nellore.
4 The Executive Engineer, R&B, APERP Division, Nellore.

**.....**
**RESPONDENTS**

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue an appropriate writ order or direction more particularly one in the nature of writ of mandamus, declaring the action of the respondents in seeking to withhold the performance security of Rs.14,23,000/- belonging to the petitioner as illegal, arbitrary and violative of clause 52.1 of the agreement dated 12-07-1999 and consequently direct the 4th respondent to release the Bank guarantee No.6048, dated 26-07-1999.

**Counsel for the Petitioner: SMT.A.PADMA**

**Counsel for the Respondents: G.P. FOR ROADS & BUILDINGS**

**The Court made the following**

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**ORDER**:

The petitioner, who is a contractor, entered into an agreement with the fourth respondent for execution of certain works. The petitioner contends that the works have been completed, but the Bank Guarantee that was furnished to a tune of Rs.14,23,000/-, pending completion of the works, is not being released by the fourth respondent and the petitioner further apprehended that the respondents are extending the Bank Guarantee from 25-07-2002 to 30-09-2004 without sufficient reasons. Therefore, the petitioner approached this Court seeking to declare the action of the respondents in withholding the security amount of Rs.14,23,000/- as illegal, arbitrary and violative of Clause 52.1 of the agreement dated 12-07-1999 and to direct the respondents to release the amount covered by the Bank Guarantee dated 26-07-1999.

The respondents contended that from out of the amount retained under the Bank Guarantee, there is likelihood of adjustment of an amount of Rs.7,56,900/- towards Excise Duty. Therefore, it is not possible to release the amount to the petitioner. It is further submitted on behalf of the respondents that a letter has been addressed to the concerned authorities for the waiver of the Excise Duty and in the event of waiver of the Excise Duty, the respondents would arrange payment of the entire amount due to the petitioner, which is lying under the Bank Guarantee.

Since it is made out by the respondents that the amount of Rs.7,56,900/- is likely to be adjusted towards Excise Duty, there cannot be any objection for the respondents for the release of the

balance amount, from out of Rs.14,23,000/-, in favour of the petitioner, after expiry of the Bank Guarantee, with effect from 30-09-2004. The respondents are at liberty to retain Rs.,7,56,900/- by way of extending the Bank Guarantee for the said amount and release the remaining amount in favour of the petitioner. The amount that is going to be retained by the respondents under Bank Guarantee, the respondents shall pass appropriate orders on receipt of the intimation from the concerned authorities regarding the exemption from payment of the Excise Duty and in the event of getting such exemption, they shall arrange for release of the said amount also in favour of the petitioner. Awaiting the reply from the concerned authorities regarding the exemption from Excise Duty, the respondents are directed not to invoke the Bank Guarantee pending receipt of the orders regarding the exemption. The petitioner shall arrange to furnish the necessary papers for extension of the Bank Guarantee in respect of the amount of Rs.7,56,900/- on

01-10-2004 since 30-09-2004 is non transacting day for the bank on account of closing the half yearly accounts.

With the above observation, the Writ Petition is disposed of. No costs.

**Dr.G.Yethirajulu, J**

28th September, 2004

Note: Issue CC by today evening.
B/o

lsn

To

1 The Principal Secretary,
Transport, Roads & Buildings, Govt. of A.P.,
Secretariat, Hyderabad.

2 The Engineer-in-Chief (R&B), Administration External Aided Project,
Erramanzil, Hyderabad.

3 The Superintending Engineer (R&B), Nellore Circle, Nellore.

4 The Executive Engineer, R&B, APERP Division, Nellore.

5. Two CCs to G.P. for Roads Buildings, High Court Buildings, Hyderabad (OUT).

6. Two CD copies.

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